

Pursuant to the authority vested in the Cannabis Control Board by Section 13 of the Cannabis Law, Chapter II of Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, and a new Part 116 is added, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Part 116

Conditional Adult-Use Retail Dispensary

Part 116 – Conditional Adult-Use Retail Dispensary

§ 116.1 Definitions.

§ 116.2 Application for Conditional Adult-Use Retail Dispensary License.

§ 116.3 Attestations.

§ 116.4 License Eligibility and Evaluation.

§ 116.5 Denials.

§ 116.6 Application for Renewal or Transition.

§ 116.7 Requirements and Prohibitions for a Conditional Adult-Use Retail Dispensary.

§ 116.8 Suspension, Revocation, and Surrender.

§ 116.9 Severability.

§ 116.1 Definitions.

For the purposes of this Part, the following terms shall have the following meanings:

- (a) *Act* means the Marihuana Regulation and Taxation Act, Chapter 92 of the Laws of 2021.

- (b) *Aggregate ownership interest* means the total ownership interest held by:
 - (i) a legal entity and any legal entity in its multilevel ownership structure; or
 - (ii) an individual and the spouse, domestic partner, civil union partner, child, sibling, or parent of such individual.

- (c) *Applicant* means a person applying for a license under this Part.

- (d) *Board* means the New York State Cannabis Control Board established pursuant to the Act.

- (e) *Bona fide labor organization* means a local labor union:
 - (1) that represents employees in this state with regard to wages, hours and working conditions;
 - (2) in which officers have been elected by secret ballot or otherwise in a manner consistent with federal law; and

(3) that is free of domination or interference by any employer and has received no improper assistance or support from any employer.

(f) *Conditional period* means four years from the date the license is granted.

(g) *Control* means the power to order or direct the management, managers, or policies of a person.

(h) *Eligible applicant* means an applicant that satisfies all the required elements in section 116.4 of this Part.

(i) *Financial institution* means any bank, mutual savings bank, consumer loan company, credit union, savings and loan association, trust company, or other lending institution under the jurisdiction of the Department of Financial Services.

(j) *Financial interest* means any actual or future right to ownership, investment or compensation arrangement with another person, either directly or indirectly, through business, investment, spouse, parent or child. Person with a financial interest does not include a passive investor.

(k) *Financier* means any person, other than financial institution or government or governmental subdivision or agency, that provides capital as a gift, provides a grant, or lends

capital pursuant to a secured or unsecured financing agreement. A financier may not receive an ownership interest, control of the business, a share of revenue, gross profits or net profits, a profit sharing interest, or a percentage of the profits in exchange for a gift, grant or loan, unless the financier receives prior approval from the Office.

(l) *First renewal date* means two years from the date the license is granted.

(m) *Fund* means a social and economic equity fund in which the state, any state agency, public authority, public benefit corporation, or division thereof has invested and is formed for the limited purpose of funding costs, which include, but are not limited to construction, renovations and equipment purchasing associated with establishing or developing adult-use cannabis operators.

(n) *Justice involved* means a person that satisfies the required elements in section 116.4(a)(2)(i) of this Part.

(o) *License* means a license issued pursuant to this Part and is conditioned on all requirements and prohibitions being met.

(p) *Licensee* means a person who has been granted a license to engage in the retail sale of cannabis products under this Part.

(q) *Marihuana-related offense* means a marihuana or cannabis offense defined under article two hundred twenty-one of the penal law prior to its repeal, any offense under article two hundred twenty or section 240.36 of the penal law prior to the effective date of article two hundred twenty-one of the penal law, where the controlled substance involved was marihuana, any offense that is eligible to be sealed or expunged pursuant to Chapter 131 of the Laws of 2019 or the Act or any offense identified by the Office to be a marihuana-related offense.

(r) *Passive investor* means a person that has an aggregate ownership interest of no more than five percent of the outstanding shares of an applicant or licensee whose shares are publicly traded, and such person does not have control over the applicant or licensee.

(s) *Person* means an individual, institution, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(t) *Primary residence* means a dwelling where a person usually stays or stays more often than other locations with an intention to remain. The Office shall be authorized to select one or more, without limitation, of the following to verify an individual's primary residence:

(1) state or federal tax filing or return with proof of filing, including e-filing acknowledgements;

(2) a signed lease agreement, a property deed, a mortgage payment, or property tax statement that includes the individual's name;

(3) a letter addressed to the applicant from:

(i) the public housing authority in New York State or New York City;

(ii) a homeless shelter indicating the applicant currently resides at the homeless shelter;

(iii) a nonprofit organization or religious institution that provides services to homeless individuals, indicating the applicant's lack of permanent housing;

(iv) a domestic violence residential care program or organization that serves domestic violence survivors; or

(v) a charitable organization registered with the New York State Attorney General that provided services to the applicant and for which eligibility was established prior to the nineteenth of April, two-thousand twenty-one, attesting to residence.

(4) a voter registration card;

(5) jury summons, court order, or other document from a court within New York State;

- (6) a government issued identification;
- (7) a paycheck stub;
- (8) a utility bill;
- (9) a health institution or insurance company statement, bill, or record;
- (10) a bank or credit card statement;
- (11) a document addressed to the applicant by a local government in New York State; or
- (12) any other proof of residency as determined by the Office.

- (u) *Qualifying business* means a business as defined in section 116.4(a)(2)(iii) of this Part.

- (v) *Regional geographic zones* means the zones established by the Office which represent the geographic area where conditional adult-use retail dispensaries will be located.

- (w) *True party of interest*

- (1) includes, but is not limited to the following:

- (i) applicant or licensee's sole proprietor, partner (whether limited or general), member, manager, president, vice president, secretary, treasurer, officer, board member, trustee, director, or a person with equivalent title to each of the foregoing;
- (ii) stockholder of applicant or licensee, other than a passive investor;
- (iii) each person that makes up the ownership structure of each level of ownership for an applicant or licensee that has a multilevel ownership structure;
- (iv) person with a right to receive some or all of the revenue, gross profit, or net profit from the licensed business during any full or partial calendar or fiscal year;
- (v) person with a financial interest in the applicant or licensee;
- (vi) person that has authority to or exercises control over the applicant or licensee;
- (vii) person that has membership rights in the applicant or licensee in accordance with the provisions of any articles of incorporation, bylaws, limited liability corporation agreements, partnership agreements, or operating agreement;
- (viii) person that assumes responsibility for the debts of the applicant or licensee; or
- (ix) spouse of any individual in sections 116.1(w)(1)(i) through 116.1(w)(1) (iii) of this part.

- (2) does not include a person that, without limitation:
- (i) receives payment for rent on a fixed basis under a lease or rental agreement relating to applicant or licensee. Notwithstanding, if there is a common ownership interest between applicant or licensee, and the entity that owns the real property, the Office may investigate all funds associated with the landlord to determine if the landlord is a financier. The Office may also investigate a landlord in situations where a rental payment has been waived or deferred;
 - (ii) receives a bonus or commission from the applicant or licensee based on the individual's sales, so long as the commission does not exceed ten percent of the sales of the applicant or licensee in any given bonus or commission period, unless otherwise determined by the Office. Commission-based compensation agreements must be in writing;
 - (iii) contracts with the applicant or licensee to receive a commission for the sale of the business or real property;
 - (iv) consults receiving a flat or hourly rate of compensation from the applicant or licensee under a contractual agreement;
 - (v) has an option to purchase the applicant or licensee, in the event the applicant or licensee is not an individual, or conditional adult-use retail dispensary, so long as no money has been paid under an option contract or agreement for such purchase or sale;

(vi) has a contract or agreement for services with an applicant or licensee, such as a branding or staffing company, as long as the applicant or licensee retains the right to and controls the business;

(vii) is a financial institution; or

(viii) is a passive investor.

§ 116.2 Application for Conditional Adult-Use Retail Dispensary License.

(a) Information Required to be Disclosed on Application. The application for a conditional adult-use retail dispensary license shall include the following:

(1) the legal name of the applicant;

(2) the name under which the conditional adult-use retail dispensary will operate or make sales if different than the legal name of the applicant, including, but not limited to, the assumed name, where applicable;

(3) the name, address, federal employment identification number, and date of birth, where applicable, of the applicant and each true party of interest of applicant;

- (4) a copy of a valid photo identification containing the individual's date of birth issued by a local, state, or federal government for the applicant and each true party of interest of applicant, each of which shall be at least 21 years of age;
- (5) a personal history disclosure for applicant and each true party of interest of applicant;
- (6) submission of fingerprints for applicant and each true party of interest set forth in sections 116.1(w)(i) - (iii), on a form and in such manner as specified by the Office for purpose of obtaining a criminal history report from division of criminal justice services;
- (7) the ownership structure of the applicant;
- (8) the percentage of ownership interest held by each true party of interest in the applicant, and a description of any other interest held in the applicant;
- (9) a list of all parent companies, subsidiaries, affiliates, predecessors, and successors of the applicant, including, but not limited to, all individuals of each entity at each level of ownership for the applicant that has a multilevel ownership structure;
- (10) the name of every financial institution at which the applicant and each true party of interest of applicant that has or has had a personal and business account that is or was used to financially support the business in the past 3 years;

(11) a current organizational chart of the applicant that includes position descriptions and the names and resumes of persons holding each position identified on the organizational chart, to the extent those positions have been filled; to the extent not revealed by the resume, include additional information with each resume setting out the employee's particular skills, education, experience or significant accomplishments that are relevant to owning or operating a conditional adult-use retail dispensary. The organization chart should identify all officers with the authority to control and all business entities that through direct or indirect means, will manage, own or control the interests and assets of the license holder. If the business entities have boards, include all board members on this chart. If the business entity has a parent company, include the name of each parent company's principal officer(s) and the percentage ownership interest;

(12) organizational documents such as the certificates of incorporation, certificates of limited partnerships, articles of organizations, charter, by-laws, partnership agreement, agreements between any two or more persons of the applicant that relate in any manner to the assets, property or profit of the applicant, or any other comparable documents that set forth the legal structure of the applicant or relate to the organization, management or control of the applicant;

(13) if an applicant is not an individual, a description, beginning with the formation of the applicant, of any and all ownership changes between the formation of the applicant and the date the application is submitted, including, but not limited to, events such as asset sales and purchases, stock sales and purchases, mergers, business combinations, or consolidations involving the applicant, including all former names of the applicant;

(14) a copy of all compensation agreements between or among applicant and each true party of interest, or group of true parties of interest, whether direct or indirect, and to the extent such agreement is oral, a written description of the terms of such agreement with true parties of interest of the applicant;

(15) any proposed or executed contract, term sheet, agreement, or side letter between the applicant, true parties of interest of the applicant, or financier, and another party that relates to the ownership and control structure, assets, liabilities, real or intellectual property, revenue, funding or capitalization, royalties, or profit, or future profit, of the applicant or proposed licensee or comparable documents;

(16) the nature, type, terms, covenants and priorities of all outstanding bonds, loans, mortgages, trust deeds, pledges, lines of credit, notes, debentures or other forms of indebtedness issued or executed, or to be issued or executed, in connection with opening or operating the proposed conditional adult-use retail dispensary;

(17) audited financial statements of the applicant for the fiscal year ending one year prior to the date the application is submitted, which shall include, but is not limited to, an income statement, balance sheet, statement of retained earnings or owners' equity, statement of cash flows, and all notes to these statements and related financial schedules, prepared in accordance with generally accepted accounting principles, along with the accompanying independent auditor's report. If the applicant was formed within the year preceding the application for license,

provide certified financial statements for the period of time the applicant has been in existence and any pro forma financials used for business planning purposes;

(18) all sources of funding used to acquire, start, or develop the business for which the license is sought, and documentation concerning the source of the funds and copies of closing documents in connection with such acquisition or development;

(19) details of any state or federal, administrative or judicial proceeding in which the applicant or any of the true parties of interest of applicant:

(i) pled guilty, pled no contest, conditionally or otherwise, or were, convicted, fined, or the equivalent, or had a registration or license cancelled, suspended or revoked; or

(ii) managed or served on the board of a business or nonprofit organization that pled guilty or was convicted, fined, or had a registration or license cancelled, suspended or revoked.

(20) information relating to a business continuity plan;

(21) a certificate of status or good standing from the governing state agency of the state of formation, certificate of assumed name, a certificate of authority to do business in New York from the New York Department of State if the applicant is a foreign business, where applicable;

(22) if applicant or any true parties of interest of applicant are currently or have previously been licensed or authorized in another state or jurisdiction to cultivate, process, manufacture, distribute or sell cannabis products in any form, the following:

(i) a copy of each license or authorizing document verifying licensure in that state or jurisdiction;

(ii) a statement granting permission to contact the regulatory agency that granted the license to confirm the information contained in the application is true and accurate; and

(iii) if the license, authorization, or application was ever cancelled, denied, suspended, revoked or otherwise sanctioned, a copy of documentation so indicating, or a statement that the applicant or true party of interest of applicant was so licensed and was never sanctioned;

(23) any management agreement, contract, arrangement, or other type of formal understanding between a contractor and an applicant where the contractor will or does provide administrative, operational, financial, advisory, and/or management services to an applicant in exchange for remuneration and a list of all the parties that are contained in those agreements;

(24) a list of each vendor with which the applicant has entered into a contract, term sheet, agreement, or side letter;

(25) whether the applicant or any true party of interest of applicant:

- (i) has ever filed a voluntary petition or had an involuntary petition filed against it for relief under the United States Bankruptcy Code;
- (ii) is out of compliance with general obligations law section 3-503(2);
- (iii) has been disciplined or sanctioned by a state or federal agency; or
- (iv) has had any state or federal tax liens against any of their property;
- (26) a list of each financier of applicant, and copy of all financier agreements, if any;
- (27) a copy of each agreement between applicant and any person with a financial interest in the applicant;
- (28) a list of any charitable contributions by the applicant in the last five years;
- (29) a list of stocks, mutual funds or bonds held by the applicant;
- (30) documentation acceptable to the Office that the applicant will be able to obtain insurance sufficient to indemnify and hold harmless the state and its officers and employees;

(31) information regarding any relationship, agreement, or arrangement that may exist between (i) the applicant or true parties of interest and (ii) any official or any other individuals with control over the approval of an application or license, including, but not limited to, employees of the Office and members of the Board;

(32) information evidencing compliance with the provisions set forth in section 116.4(a)(1) of this Part as required by the Office;

(33) information evidencing applicant's eligibility as set forth in sections 116.4(a)(2) or 116.4(a)(3) of this Part as required by the Office;

(34) designation of each portion of the application that applicant considers to be exempt from disclosure under the New York State Freedom of Information Law; and

(35) any additional information requested by the Office.

(b) General.

(1) Notification of the availability of applications, instructions for completion and submission of applications, and application forms will be posted on the Office's website at www.cannabis.ny.gov.

(2) The license application shall be submitted via forms provided by the Office. The forms will include instructions for their completion and submission. The application will reflect the information required of applicants by the Cannabis Law and this Part and will include requests for information in support of the application needed by the Office to ensure that the application submitted is complete. If all material, documentation, and information required by the application form is not submitted, the applicant shall receive a deficiency notice from the Office. The applicant shall then have 30 calendar days from the date the deficiency notice is sent to resubmit the application in its entirety. Applications that are still incomplete after this opportunity to cure will not be considered. Upon receipt of an application deemed to be complete, the Office will engage in no further communication with the applicant until after the selection process is completed.

(3) Only applications completed in accordance with this Part as determined by the Office and submitted in a timely manner shall be considered.

(4) Prior to the issuance of a license, an applicant may apply to amend its previously submitted true parties of interest; provided, however, that such amendment shall not violate the requirements as set forth in this Part. Failure to apply to amend may be deemed an inconsistent material statement in the application as to its true parties of interest and such failure may constitute grounds for denial of the application by the Board.

(5) There shall be a non-refundable application and license fee of \$2,000 for applications submitted for a license under this Part.

(c) Continuing Duty to Disclose and Approval.

(1) The applicant shall have a continuing duty to disclose material changes in the information provided to the Office required in this Part.

(2) If an applicant is issued a license, this duty of ongoing disclosure shall continue throughout the licensed period and the following shall require prior written approval of the Office, including any changes thereto:

(i) ownership and control;

(ii) any financier arrangements;

(iii) any true party of interest;

(iv) location;

(v) management service agreements;

(vi) intellectual property agreements;

(vii) guaranty agreement; and

(viii) any other activity or agreement as determined by the Office.

§ 116.3 Attestations.

(a) The applicant shall sign the proof of attestation, attesting that the applicant:

(1) has submitted an application that is complete and accurate;

(2) submits to jurisdiction of the courts of New York State and the application of all state laws, local laws and regulations of New York State, including, but not limited to, relating to the conditional adult-use retail dispensary;

(3) shall not sell any cannabis product to anyone under 21 years of age;

(4) shall not sell any cannabis product in any disallowed form, as determined by the Office;

(5) shall not give away any cannabis product as set forth in the Act;

(6) shall only acquire cannabis products from entities authorized to distribute cannabis products in New York State;

(7) shall ensure that the eligible applicant, upon being granted a license, shall maintain the minimum ownership and control requirements set forth in section 116.4 of this Part, and that noncompliance shall be deemed a surrender of license as determined by the Office;

- (8) shall ensure that its true parties of interest are of good moral character;
- (9) shall exercise reasonable care to confirm its information and the ability of each person to meet the requirements as set forth in this Part;
- (10) shall provide the Office a complete disclosure that includes all true parties of interest and that each individual who is a true party of interest is at least 21 years of age;
- (11) shall not attempt to conceal or disguise ownership or other control over its operations in its submissions;
- (12) shall register with the New York State Department of Taxation and Finance for a certificate of adult-use cannabis registration and, if applicable, a certificate of authority should the applicant be granted a license;
- (13) shall indemnify and hold harmless the State of New York for any and all civil or criminal penalties resulting from receiving a conditional adult-use retail dispensary license;
- (14) has entered into a labor peace agreement with a bona fide labor organization and understands that the maintenance of such a labor peace agreement shall be an ongoing material condition of the license;

(15) shall comply with applicable state and local laws, regulations, and guidance; and

(16) shall submit any other information as required by the Office.

§ 116.4 License Eligibility and Evaluation.

(a) Eligibility. The following minimum requirements must be met to become an eligible applicant for this license:

(1) an applicant must demonstrate:

(i) a significant presence in New York State, either individually or by having a principal corporate location in the state;

(ii) it is incorporated or otherwise organized under the laws of New York State; or

(iii) a majority of the ownership of the applicant are residents of New York State by being physically present in the state no less than 180 calendar days during the current year or 540 calendar days over the course of three years;

(2) if the applicant is an individual, or an entity with one or more individuals, at least one individual must:

(i) be justice involved, which means an individual that:

(a) was convicted of a marihuana-related offense in New York State prior to the thirty-first of March two thousand twenty-one;

(b) had a parent, legal guardian, child, spouse, or dependent who was convicted of a marihuana-related offense in New York State prior to the thirty-first of March two thousand twenty-one; or

(c) was a dependent of an individual who was convicted of a marihuana-related offense in New York State prior to the thirty-first of March two thousand twenty-one; and

(ii) provide evidence of the primary residence of the justice involved individual at the time of such individual's arrest or conviction; and

(iii) hold or have held, for a minimum of two years, at least ten percent ownership interest in, and control of, a qualifying business, which means a business that had net profit for at least two of the years the business was in operation; or

(3) if the applicant is a nonprofit organization, or wholly owned and controlled by one, the nonprofit organization must:

(i) be recognized as an entity pursuant to section 501(c)(3) of the Internal Revenue Code;

(ii) intentionally serve justice involved individuals and communities with historically high rates of arrest, conviction, incarceration or other indicators of law enforcement activity for marihuana-related offenses;

(iii) operate and manage a social enterprise that had at least two years of positive net assets or profit as evidenced in the organization's tax returns;

(iv) have a history of creating vocational opportunity for justice involved individuals;

(v) have justice involved individual(s) on its board or as officers; and

(vi) have at least five full time employees.

(b) Applicant Ownership and Control Minimums.

(1) At least 51% or more of the applicant shall be owned, in the aggregate, by:

(i) at least one individual that satisfies the requirements for an eligible applicant set forth in sections 116.4(a)(1) and 116.4(a)(2) or entity that satisfies the requirements for an eligible applicant set forth in sections 116.4(a)(1) and 116.4(a)(3) of this Part; and

(ii) any other additional individuals, if any, who are justice involved; and

(2) At least one individual that satisfies the requirements for an eligible applicant set forth in sections 116.4(a)(1) and 116.4(a)(2) or entity that satisfies the requirements for an eligible applicant set forth in sections 116.4(a)(1) and 116.4(a)(3) of this Part shall own at least 30% of the applicant and such individual or entity shall have sole control of the applicant or licensee.

(c) Evaluation. An eligible applicant shall be evaluated based on any of the following criteria which shall be weighted as determined by the Office:

(1) if the applicant is an individual, or an entity with one or more individuals, whether the justice involved individual was themselves convicted of a marihuana-related offense as set forth in section 116.4(a)(2)(i)(a) of this Part;

(2) the justice involved individual's primary residence at the time of such individual's arrest or conviction:

(i) relative to areas with historically high rates of arrest, conviction, or incarceration for marihuana-related offenses;

(ii) relative to areas with historically low median income; or

(iii) was provided by a public housing authority in New York State or New York City; and

(3) the qualifying business based on:

- (i) the number of employees employed by the business;
 - (ii) the number of years the business has been in operation;
 - (iii) the profitability of the business;
 - (iv) type of business and whether the business was a retail business, or sold products or services directly to the end-consumer;
 - (v) whether the business had a physical location; or
 - (vi) whether the business received or resolved any violations, fines or fees assessed against the business by state or federal regulatory authorities; and
- (4) any other factors as determined by the Office.
- (d) The office may create regional geographic zones for the scoring of applicants. Applicants may be asked to rank a number of preferences of regional geographic zones to be considered for a license. For regional geographical zones where there are more applicants than available licenses, the Office may select from eligible applicants who indicated first preference for the given region based on weighted scoring of the evaluation criteria set out above. In the event there is a tie between two or more candidates or there are more applicants than available licenses after

the evaluation criteria has been applied, the Office is authorized to use a random selection process to identify the final applicants to recommend to the Board for licensure.

§ 116.5 Denials.

(a) Notwithstanding an applicant satisfying the requirements set forth in this Part, the application shall be denied where an applicant or eligible applicant, or any true party of interest of the applicant:

- (1) has submitted an application that contains inconsistent information;
- (2) failed to submit the materials required by this Part within the specified time allotted;
- (3) failed to submit fingerprints for purposes of providing a criminal history report required pursuant to section 138 of the Cannabis Law;
- (4) is a person forbidden to traffic cannabis as set forth in section 137 of the Cannabis Law;
- (5) has demonstrated prior business practices and financial arrangements that may not comply with state and local laws incidental to the cannabis industry;
- (6) has had a license associated with cannabis cancelled, revoked or suspended in any other state or jurisdiction;

- (7) creates or enhances the dangers of unlawful practices, methods and activities in the cannabis industry, including, but limited to, product inversion or diversion;
- (8) is delinquent in filing any required tax returns or paying any amount owed to any local, state or federal government;
- (9) causes a violation of Sections 72 or 85 of the Cannabis Law; or
- (10) is not a person of good moral character.

§116.6 Application for Renewal or Transition.

(a) Renewal:

- (1) Applicant shall comply with all applicable state and local laws, regulations, and guidance relating to the licensed activities for renewal of its license.
- (2) Prior to the expiration of the first renewal date, licensee shall submit an application to renew the license as prescribed by the Office and include such information and fees, if any, as the Office may require.
- (3) Upon request for renewal, the Office shall consider the licensee's history of compliance with the requirements of this part and applicable state and local laws, regulations, and guidance.

(4) The Board may deny a renewal after consideration of the licensee's history of compliance.

(b) Transition:

(1) After the conditional period, to continue to conduct the activities licensed under this Part, a licensee may apply to transition to an adult-use retail dispensary license issued by the Board.

(2) One hundred twenty calendar days prior to the expiration of the conditional period, licensee shall notify the Office of its intent to continue the activities licensed under this Part beyond the expiration of the conditional period.

(3) The Office shall consider the licensee's history of compliance with applicable state and local laws, regulations, and guidance, including, but not limited to, whether the applicant has served the community in which it is located, to determine whether the licensee may transition to an adult-use retail dispensary license approved by the Board upon the expiration of the conditional period.

(4) The review shall conclude prior to the expiration of the conditional period, unless otherwise extended by the Office.

(5) The Board may deny a transition after consideration of the licensee's history of compliance.

§116.7 Requirements and Prohibitions for Conditional Adult-Use Retail Dispensary

License.

(a) A conditional adult-use retail dispensary license shall have the same authorizations and conditions as an adult-use retail dispensary as defined by the Cannabis Law and regulations promulgated by the Board;

(b) Should an applicant be awarded a conditional adult-use retail dispensary license, provisions, including, but not limited to, the attestation in the application, become a mandatory condition of the license; and

(c) The following conditions shall also apply to the license:

(1) each licensee and true party of interest shall be at least 21 years of age;

(2) at least 51% or more of the licensee shall be owned, in the aggregate, by:

(i) at least one individual that satisfies the requirements for an eligible applicant set forth in sections 116.4(a)(1) and 116.4(a)(2), or entity that satisfies the requirements for an eligible applicant set forth in sections 116.4(a)(1) and 116.4(a)(3) of this Part; and

- (i) any other additional individuals, if any, who are justice involved; and

- (3) at least one individual that satisfies the requirements for an eligible applicant set forth in sections 116.4(a)(1) and 116.4(a)(2) or entity that satisfies the requirements for an eligible applicant set forth in sections 116.4(a)(1) and 116.4(a)(3) of this Part shall own at least 30% of the licensee and such individual or entity shall have sole control of the licensee;

- (4) the percentage of ownership in the licensee of the individual or entity set forth in sections 116.4(a)(2) and 116.4(a)(3) of this Part shall be proportionate to their interest in the capital, assets, and profits and losses of the licensee;

- (5) during the conditional period, the licensee shall maintain the minimum ownership and control requirements in the licensee as set forth in sections 116.7(c)(2), 116.7(c)(3) and 116.7(c)(4) of this Part;

- (6) the licensee shall enter into and comply with all terms and conditions of any agreement with any fund, as defined by this Part, that has been approved by the Board and made available by the office, including, but not limited to, accepting a dispensary location identified by the fund or office, any loan agreement with such fund, any lease or sublease agreement with the State of New York or its agents, or any other such agreements into which the licensee enters;

(7) the licensee shall have entered into a labor peace agreement with a bona fide labor organization and each party to the agreement has signed such agreement prior to the license being granted;

(8) the licensee shall commence operations no later than 12 months from the date the license is granted, or as otherwise determined by the Office;

(9) the applicant is prohibited from leasing, assigning, or subcontracting, in whole or in part, the leased premises associated with the fund, as defined by this Part;

(10) A licensee or any true party of interest of the licensee shall not have a direct or indirect financial or controlling interest in more than three conditional adult-use retail dispensary licenses issued under this Part until the expiration of the conditional period;

(11) A licensee or any true party of interest of the licensee shall not hold an adult-use cultivation, conditional adult-use cultivator, processor, microbusiness, cooperative or distributor license pursuant to article four of the Cannabis Law or be registered as a registered organization pursuant to article three of the Cannabis Law, except for such organizations licensed pursuant to sections 68-a and 68-b of this article;

(12) A licensee or any true party of interest of the licensee shall not be interested, directly or indirectly, in any cultivator, processor, distributor, or microbusiness operator licensed pursuant to this article by stock ownership, interlocking directors, mortgage, or lien on any personal or

real property or by any other means. Any lien, mortgage or other interest or estate, however, now held by such licensee or true party of interest on or in the personal or real property of such manufacturer or distributor, which mortgage, lien, interest or estate was acquired on or before December thirty-first, two thousand nineteen, shall not be included within the provisions of this section; provided, however, the burden of establishing the time of the accrual of the interest comprehended by this section shall be upon the person who claims to be entitled to the protection and exemption afforded hereby;

(13) the licensee shall comply with any other requirements as may be promulgated by the Office; and

(14) after the conditional period, to continue to conduct the activities licensed under this Part, a licensee must apply to transition to an adult-use retail dispensary license approved by the Board.

§116.8 Suspension, Revocation, and Surrender.

(a) The Board shall deliver a written notice to the licensee for failure to comply with this Part, applicable state and local laws, regulations, or guidance relating to conditional adult-use retail dispensary and adult-use retail dispensary, including those promulgated after applicant submits its application for a license. If no effort has been made to cure, the license shall be deemed surrendered 30 calendar days from the date of the written notice. Written notice shall be sent to the licensee's last known address on file with the Office.

(b) In the event that licensee elects to cease operation of all licensed activities or to surrender its license within the conditional period, the following shall apply:

(1) licensee shall notify the Office in writing at least 30 calendar days prior to the date licensee anticipates ceasing operations;

(2) the written notice shall include a proposed plan for closure. The plan shall be subject to Office approval and may include a recommendation of any individual or entity that would qualify under this Part; and

(3) upon surrender of the license or cessation of operation, licensee shall vacate the leased premises associated with the fund, as defined by this Part, within 30 calendar days of surrender or cessation.

(c) If a licensee fails to comply with standards and special conditions of the license, the Office may assess a penalty in addition to the surrender of the license pursuant to this Part.

§116.9 Severability

The provisions of this Part are severable. If any provision of this Part is found to be invalid, or if any application of this Part to any person or circumstance is found to be invalid, the invalidity shall not affect any other provisions or applications which can be given effect without the invalid provision or application.